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In the Supreme Court of the United States

OCTOBER TERM, 1924

CHANG CHAN ET AL., APPELLANTS
v.
JOHN D. NAGLE, AS COMMISSIONER OF IMMIGRATION FOR THE PORT OF SAN FRANCISCO, APPELLEE | No. 770

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF ON BEHALF OF THE APPELLEE

STATEMENT

The four first-named appellants are citizens of the United States, of Chinese descent, who are domiciled in the United States. In this proceeding they are seeking to obtain, by *habeas corpus,* the release of their wives, the four last-named appellants, who are now detained by the appellee, Commissioner of Immigration at San Francisco.

The wives, on whose behalf relief is sought, are Chinese subjects. They arrived at San Francisco from China on July 11, 1924, and were refused admission to this country, under the provisions of the

Immigration Act of 1924 (Act of May 26, 1924, c. 190, 43 Stat. 153). The appellee based his action upon section 13 (c) of that Act, and held that the wives were mandatorily excluded as persons ineligible to citizenship. For this reason he declined to grant them a hearing as to the fact of their marriage or as to the citizenship of their husbands, holding that the wives must be excluded in any event, even though the existence of the marriage relation and the citizenship of the husbands were proved. This decision was affirmed by the Secretary of Labor on appeal.

Relief was then sought by *habeas corpus* in the District Court for the Northern District of California. That court, on October 25, 1924, decided that the wives were rightly excluded; its decision, however, was based upon a different ground from that taken by the immigration authorities—upon the ground, namely, that the husbands had failed to make the applications required by section 9 of the Immigration Act of 1924, and the wives had failed to obtain the required immigration visas. The opinion of the District Court is reported, sub nom. *Ex parte Chan Shee*, in 2 F. (2nd) 995, second case, beginning at page 998.

From the District Court an appeal was taken to the Circuit Court of Appeals, which has certified, for the determination of the Supreme Court, the following questions:

> Should the petitioners [the wives] be refused admission to the United States either—
>
> (*a*) Because of the want of a visa, or
>
> (*b*) Because of want of right of admission if found to be Chinese wives of American citizens.

On behalf of the appellee it is submitted that these questions are answered by the clear and unequivocal language of the Act, and that the appellants must in either case be excluded from the United States.

Consideration of question (*a*) above as to the want of a visa will be postponed until after the discussion of question (*b*), which involves the principal point in the case.

STATUTES INVOLVED

The principal statute with which we are concerned is the Immigration Act of May 26, 1924, c. 190 (43 Stat. 153). This Act is hereafter cited as the Act of 1924.

The relevant provisions of that Act are as follows:

> SEC. 2 (g). Nothing in this Act shall be construed to entitle an immigrant, to whom an immigration visa has been issued, to enter the United States, if, upon arrival in the United States, he is found to be inadmissible to the United States under the immigration laws. The substance of this subdivision shall be printed conspicuously upon every immigration visa.

SEC. 3. When used in this Act the term "immigrant" means any alien departing from any place outside the United States destined for the United States, except (1) a government official, his family, attendants, servants, and employees, (2) an alien visiting the United States temporarily as a tourist or temporarily for business or pleasure, (3) an alien in continuous transit through the United States, (4) an alien lawfully admitted to the United States who later goes in transit from one part of the United States to another through foreign contiguous territory, (5) a bona fide alien seaman serving as such on a vessel arriving at a port of the United States and seeking to enter temporarily the United States solely in the pursuit of his calling as a seaman, and (6) an alien entitled to enter the United States solely to carry on trade under and in pursuance of the provisions of a present existing treaty of commerce and navigation.

SEC. 4. When used in this Act the term "non-quota immigrant" means—

(a) An immigrant who is the unmarried child under 18 years of age, or the wife, of a citizen of the United States who resides therein at the time of the filing of a petition under section 9;

(b) An immigrant previously lawfully admitted to the United States, who is returning from a temporary visit abroad;

(c) An immigrant who was born in the Dominion of Canada, Newfoundland, the Republic of Mexico, the Republic of Cuba,

the Republic of Haiti, the Dominican Republic, the Canal Zone, or an independent country of Central or South America, and his wife, and his unmarried children under 18 years of age, if accompanying or following to join him;

(d) An immigrant who continuously for at least two years immediately preceding the time of his application for admission to the United States has been, and who seeks to enter the United States solely for the purpose of, carrying on the vocation of minister of any religious denomination, or professor of a college, academy, seminary, or university; and his wife, and his unmarried children under 18 years of age, if accompanying or following to join him; or

(e) An immigrant who is a bona fide student at least 15 years of age and who seeks to enter the United States solely for the purpose of study at an accredited school, college, academy, seminary, or university, particularly designated by him and approved by the Secretary of Labor, which shall have agreed to report to the Secretary of Labor the termination of attendance of each immigrant student, and if any such institution of learning fails to make such reports promptly the approval shall be withdrawn.

SEC. 5. When used in this Act the term "quota immigrant" means any immigrant who is not a non-quota immigrant. An alien who is not particularly specified in this Act as a non-quota immigrant or a non-immigrant shall not be admitted as a non-quota

immigrant or a non-immigrant by reason of relationship to any individual who is so specified or by reason of being excepted from the operation of any other law regulating or forbidding immigration.

SEC. 6. (a) In the issuance of immigration visas to quota immigrants preference shall be given—

(1) To a quota immigrant who is the unmarried child under 21 years of age, the father, the mother, the husband, or the wife, of a citizen of the United States who is 21 years of age or over * * *.

SEC. 8. A consular officer may, subject to the limitations provided in sections 2 and 9, issue an immigration visa to a non-quota immigrant as such upon satisfactory proof, under regulations prescribed under this Act, that the applicant is entitled to be regarded as a non-quota immigrant.

SEC. 9. (a) In case of any immigrant claiming in his application for an immigration visa to be a non-quota immigrant by reason of relationship under the provisions of subdivision (a) of section 4, or to be entitled to preference by reason of relationship to a citizen of the United States under the provisions of section 6, the consular officer shall not issue such immigration visa or grant such preference until he has been authorized to do so as hereinafter in this section provided.

(b) Any citizen of the United States claiming that any immigrant is his relative, and that such immigrant is properly ad-

missible to the United States as a non-quota immigrant under the provisions of subdivision (a) of section 4 or is entitled to preference as a relative under section 6, may file with the Commissioner General a petition in such form as may be by regulations prescribed, stating (1) the petitioner's name and address; (2) if a citizen by birth, the date and place of his birth; (3) if a naturalized citizen, the date and place of his admission to citizenship and the number of his certificate, if any; (4) the name and address of his employer or the address of his place of business or occupation if he is not an employee; (5) the degree of the relationship of the immigrant for whom such petition is made, and the names of all the places where such immigrant has resided prior to and at the time when the petition is filed; (6) that the petitioner is able to and will support the immigrant if necessary to prevent such immigrant from becoming a public charge; and (7) such additional information necessary to the proper enforcement of the immigration laws and the naturalization laws as may be by regulations prescribed.

(c) The petition shall be made under oath administered by any individual having power to administer oaths, if executed in the United States, but, if executed outside the United States, administered by a consular officer. The petition shall be supported by any documentary evidence required by regulations prescribed under this Act. Appli-

cation may be made in the same petition for admission of more than one individual.

(d) The petition shall be accompanied by the statements of two or more responsible citizens of the United States, to whom the petitioner has been personally known for at least one year, that to the best of their knowledge and belief the statements made in the petition are true and that the petitioner is a responsible individual able to support the immigrant or immigrants for whose admission application is made. These statements shall be attested in the same way as the petition.

(e) If the Commissioner General finds the facts stated in the petition to be true, and that the immigrant in respect of whom the petition is made is entitled to be admitted to the United States as a nonquota immigrant under subdivision (a) of section 4 or is entitled to preference as a relative under section 6, he shall, with the approval of the Secretary of Labor, inform the Secretary of State of his decision, and the Secretary of State shall then authorize the consular officer with whom the application for the immigration visa has been filed to issue the immigration visa or grant the preference.

(f) Nothing in this section shall be construed to entitle an immigrant in respect of whom a petition under this section is granted, to enter the United States as a nonquota immigrant, if, upon arrival in the United States, he is found not to be a nonquota immigrant.

SEC. 13. (a) No immigrant shall be admitted to the United States unless he (1) has an unexpired immigration visa or was born subsequent to the issuance of the immigration visa of the accompanying parent, (2) is of the nationality specified in the visa in the immigration visa, (3) is a non-quota immigrant if specified in the visa in the immigration visa as such, and (4) is otherwise admissible under the immigration laws.

* * * * *

(c) *No alien ineligible to citizenship shall be admitted to the United States* unless such alien (1) is admissible as a non-quota immigrant under the provisions of subdivision (b), (d), or (e) of section 4, or (2) is the wife, or the unmarried child under 18 years of age, of an immigrant admissible under such subdivision (d) and is accompanying or following to join him, or (3) is not an immigrant as defined in section 3. [Italics ours.]

SEC. 25. The provisions of this Act are in addition to and not in substitution for the provisions of the immigration laws, and shall be enforced as a part of such laws, and all the penal or other provisions of such laws, not inapplicable, shall apply to and be enforced in connection with the provisions of this Act. An alien, although admissible under the provisions of this Act, shall not be admitted to the United States if he is excluded by any provision of the immigration laws other than this Act, and an alien, although admissible under the provisions of

> the immigration laws other than this Act, shall not be admitted to the United States if he is excluded by any provision of this Act.
>
> SEC. 28. As used in this Act—
>
> * * * * *
>
> (c) The term "ineligible to citizenship," when used in reference to any individual, includes an individual who is debarred from becoming a citizen of the United States under section 2169 of the Revised Statutes, or under section 14 of the Act entitled "An Act to execute certain treaty stipulations relating to Chinese," approved May 6, 1882, or under section 1996, 1997, or 1998 of the Revised Statutes, as amended, or under section 2 of the Act entitled "An Act to authorize the President to increase temporarily the Military Establishment of the United States," approved May 18, 1917, as amended, or under law amendatory of, or supplementary to, or in substitution for, any of such sections.

Sections 1996, 1997, and 1998 of the Revised Statutes, above mentioned, deal with draft evaders and deserters. Section 2 of the Act of May 18, 1917, c. 15 (40 Stat. 76, 77), as amended by later acts, deals with alien declarants claiming exemption from the draft. With them this case is not concerned. But the first two statutes above enumerated are directly in point. These are:

> R. S. 2169. The provisions of this Title shall apply to aliens being free white persons, and to aliens of African nativity and to persons of African descent.

Act of May 6, 1882, c. 126, s. 14 (22 Stat. 58, 61):

> That hereafter no State court or court of the United States shall admit Chinese to citizenship; and all laws in conflict with this act are hereby repealed.

ARGUMENT

I

That the wives in this case are "aliens ineligible to citizenship" can not for a moment be doubted. They are ineligible under the provisions of Section 2169 of the Revised Statutes, and also under section 14 of the Act of May 6, 1882, c. 126 (22 Stat. 58, 61). Nor is their ineligibility altered by marriage to American citizens, no matter when the marriage took place. If it took place prior to September, 1922, it is governed by section 1994 of the Revised Statutes, which excludes Chinese wives by providing that—

> Any woman who is now or may hereafter be married to a citizen of the United States, *and who might herself be lawfully naturalized,* shall be deemed a citizen. [Italics ours.]

If the marriage took place since September, 1922, it is governed by the Act of September 22, 1922, c. 411, s. 2 (42 Stat. 1021, 1022), which provides:

> That any woman who marries a citizen of the United States after the passage of this Act, or any woman whose husband is naturalized after the passage of this Act, shall not become a citizen of the United States

> by reason of such marriage or naturalization; but, *if eligible to citizenship,* she may be naturalized upon full and complete compliance with all requirements of the naturalization laws, with the following exceptions * * *. [Italics ours.]

So in either case these Chinese wives must be held to be "aliens ineligible to citizenship" as contemplated by the Immigration Act of 1924.

II

Since they are aliens ineligible to citizenship, they are barred from the United States by section 13 (c) of that Act, which excludes all such aliens. Section 13 (c) enumerates a list of exceptions, *which does not include persons having the status of the present appellants.* Those exceptions, incorporated into section 13 (c), make the section read:

> No alien ineligible to citizenship shall be admitted to the United States unless such alien is—
>
> 1. An immigrant previously lawfully admitted, who is returning from a temporary visit abroad. (Section 4 (b).)
>
> 2. A minister of religion or a professor, or the wife, or child under 18, of such minister or professor. (Section 4 (d).)
>
> 3. A bona fide student at least 15 years old. (Section 4 (e).)
>
> 4. A government official, or a member of his household. (Section 3 (1).)
>
> 5. A tourist. (Section 3 (2).)

6. An alien in continuous transit through the United States. (Section 3 (3).)

7. An alien lawfully admitted, who later goes in transit from one part of the United States to another, through foreign contiguous territory. (Section 3 (4).)

8. An alien seaman. (Section 3 (5).)

9. An alien entitled to enter as a merchant under a present existing treaty of commerce and navigation. (Section 3 (6).)

There are, therefore, nine exceptions to the general rule which excludes aliens ineligible to citizenship. The appellants in this case do not fall within any of those exceptions. And so, by the express language of the statute, they must be excluded under the general rule laid down by section 13 (c).

III

But it is argued that sections 4 (a) and 6 (a) (supra, pp. 4, 6) give to the wives of American citizens the right to enter, and that this right is not taken away by section 13 (c). It is further argued that a conflict exists in the Act, and that section 13 (c) must give way.

It is submitted that these arguments are untenable. There is, in fact, no conflict; and the whole statute may be construed without declaring any part inconsistent with any other.

Sections 4 (a) and 6 (a) do not confer upon the wife of a citizen any unqualified right to enter. Their purpose is merely to exempt or to relieve her from the numerical requirements of the quota. Section 4 (a) exempts her from the operation of

the quota by declaring her to be a "non-quota immigrant." Section 6 (a) gives her a preference within the quota. But in neither case is she given a right to enter regardless of all limitations whatsoever. She can not, for example, enter without a visa. She can not enter if she is of the criminal class. She can not enter if she is suffering from a contagious disease. In brief, she can not enter, merely because she is a wife, *unless she is otherwise admissible.* The limitation "if otherwise admissible" is inherent in both section 4 (a) and section 6 (a) and, indeed, in almost every section of the Act.

It was not the intention of Congress to confer the right of entry upon *inadmissible* aliens merely because they are related to citizens of the United States, or for any other reason. This is made clear by numerous provisions of the Act—for example, by section 2 (g), section 5, section 9 (f), section 13 (a) (4), and section 25—all of which are quoted above. The marriage status here confers no additional right either to enter or to remain in violation of the law. *Low Wah Suey* v. *Backus,* 225 U. S. 460, 476.

The provisions of sections 13 (c) constitute an additional restriction upon immigration and extend alike to quota immigrants and to nonquota immigrants. The application of section 13 (c) extends to the whole Act, with the nine exceptions set forth above. Among those nine exceptions no mention is made of the wives of American citizens;

no reference is made to sections 4 (a) and 6 (a). Section 13 (c) in terms excludes *all* aliens who are ineligible to citizenship. That section reads, "*No alien ineligible to citizenship shall be admitted.*" There is no ground upon which we can make the interpolation suggested by opposing counsel, "*No alien ineligible to citizenship* **[unless married to a citizen]** *shall be admitted.*" The statute must be construed as it is written; and the inevitable conclusion is that alien wives of citizens can not be admitted unless they are themselves eligible to citizenship.

IV

Nor can it be argued that this was not the intention of Congress. An examination of the legislative history of the Immigration Act of 1924 shows that Congress had its attention clearly fixed upon this problem and that Congress deliberately intended that section 13 (c), should apply to cases like the one at bar.

When the bill (having been practically redrawn) was reported from the Conference Committee to the House, the attention of Members was specifically drawn to this point; and the following colloquy took place between Mr. Watkins and Mr. Vaile (the latter being a member of the conference committee, in charge of the bill on the floor):

> Mr. WATKINS. Every student can come in, and every preacher, student, and instruc-

> tor, not only that, but every Japanese a citizen of the United States can go over there and bring back a wife.
>
> Mr. VAILE. *No. Read the language* [Congressional Record (68th Congress, 1st Sess.), Vol. 65, part 8, p. ~~8230~~ 8229] [Italics ours.]

Both Japanese and Chinese are alike ineligible to naturalization under Section 2169 of the Revised Statutes; and the intention of Congress to exclude both from admission to this country is clear. Congressional Record, vol. 65, part 9, p. 8639. Nor is there any indication that Congress intended to make any exception in favor of Japanese or Chinese wives of American citizens. On the contrary, if the statement above quoted is to be taken as an indication, it seems clear that Congress deliberately intended *not* to make that exception.

V

It is an elementary principle of statutory construction that *expressio unius est exclusio alterius*. In this instance Congress has enunciated as a general rule that aliens ineligible to citizenship are to be denied admission to the United States. To this general rule Congress has made nine exceptions, as set forth above, under point II. It is idle to argue that Congress might have added, or ought to have added, a tenth exception in favor of these appellants. There is no such tenth exception in the Act. Where a section of a statute contains its own

specific provisos and limitations, the existence of these tends to negative any other and implied exception. *Lapina* v. *Williams,* 232 U. S. 78, 92.

> No mere omission, no mere failure to provide for contingencies, which it may seem wise to have specifically provided for, justify any judicial addition to the language of the statute. [*United States* v. *Goldenberg,* 168 U. S. 95, 103.]
>
> Wherever the situation of a party was such as, in the opinion of the legislature, to furnish a motive for excepting him from the operation of the law, the legislature has made the exception. It would be going far for this court to add to those exceptions. [*McIver* v. *Ragan,* 2 Wheat. 25, 29.]
>
> [Cf. *Bank of Alabama* v. *Dalton,* 9 How. 522, 529.]

VI

But the appellants argue that it would work a grave hardship upon them in this case to exclude them from the United States; that the domicile of the husband is the domicile of the wife; and that these wives have a right to enter and reside in the country of which their husbands are citizens.

It is submitted that these arguments are for Congress, and not for the courts. In this case the will of Congress has been manifested by clear and unambiguous words. *All* aliens ineligible to citizenship are to be excluded, with certain exceptions. Those exceptions do not cover this case. That Con-

gress might have expected these appellants is irrelevant. That it did not in fact except them is clear. And since that is so, the courts have only to follow the expressed will of Congress.

The argument based upon hardship can not prevail against the clear language of the Act. As this Court has said:

> This argument is a dangerous one, and never should be heeded where the hardship would be occasional and exceptional. It would be better, it was once said by Lord Eldon, to look hardship in the face rather than to break down the rules of law. [*St. Louis and Iron Mountain Ry.* v. *Taylor*, 210 U. S. 281, 295.]
>
> [Cf. *United States* v. *First National Bank*, 234 U. S. 245, 260.]

Nor does the argument of hardship receive any additional weight from the fact that the husbands in this case are citizens of the United States. Their wives are not citizens; and under the law they never can be naturalized no matter how long they may remain married to citizens.

It is fair to assume that Congress had these facts in mind; but, in any event, the law is clear. A recent decision of this Court is directly in point:

> The words of the statute being clear, if it unjustly discriminates against the native-born citizen, or is cruel and inhuman in its results, as forcefully contended, the remedy lies with Congress and not with the courts. Their duty is simply to enforce the law as it

is written, unless clearly unconstitutional. [*Chung Fook* v. *White,* 264 U. S. 443, 446.]

It may be conceded that the effect of the law is to divide families, and to deny to the wife the right to enter and reside in the country where her husband is domiciled. But even that fact can not furnish grounds for judicial legislation or afford reason for departure from the plain words of the statute. This Court has on at least three recent occasions been confronted with similar arguments; and in each case it has declined to interfere.

Chung Fook v. *White,* supra.
Commissioner of Immigration v. *Gottlieb,* 265 U. S. 310.
Yee Won v. *White,* 256 U. S. 399.

VII

Moreover, even if these appellants had been otherwise entitled to enter the country, still they were properly excluded because of their failure to comply with the requirements of the law.

The Immigration Act of 1924 requires immigration visas from both quota immigrants (section 2) and non-quota immigrants (section 8). An immigrant who is the wife of a citizen of the United States may enter as a nonquota immigrant under section 4 (a) *provided* that her husband has made the application prescribed by section 9. Or she may obtain preference within the quota under section 6, *provided,* likewise, that her husband has made the application required by section 9. In

either case the wife can not enter without obtaining an immigration visa, and she can not obtain that visa until her husband has made application to the Commissioner General.

In this case no applications were made by the husbands and no visas were obtained by the wives. It is true that the wives were on the high seas on July 1, 1924, when certain portions of the Act, together with regulations thereunder, went into effect. But it must be noted that section 31 (a) of the Act provides:

> Sections 2, 8, 13, 14, 15, and 16, and subdivision (f) of section 11, shall take effect on July 1, 1924, *except that immigration visas and permits may be issued prior to that date, which shall not be valid for admission to the United States before July 1, 1924.* [Italics ours.]

The record does not show that any attempt was made prior to July 1, 1924, to obtain immigration visas, as contemplated by section 31 (a). And without visas the appellants can not be admitted under section 13 (a) of the Act.

VIII

It is submitted, then, that these appellants were properly excluded. Even under the assumption that they are otherwise admissible, they have not complied with the formalities prescribed for admission; and this ground alone would suffice for exclusion.

It is submitted, however, that they are not in fact admissible under any circumstances, regardless of the question of the visas. The law which excludes these aliens is clear and unambiguous. The courts can not add to the exceptions created by Congress.

It is therefore submitted that both of the questions certified should be answered in the affirmative.

JAMES M. BECK,
Solicitor General.
WILLIAM J. DONOVAN,
Assistant to the Attorney General.

APRIL, 1925.

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